IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2178 OF 2006

Vijay Co-op.Hsg. Society Ltd. ...Petitioner.
Vs.
Municipal Corporation for Greater Mumbai &Ors. ...Respondents.
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Mr. P.A. Sawant for the Petitioner.
Mrs. A.R. Joshi for Respondent Nos.1 to 3.
Mr.M. S. Bhandari Respondent No.4.
Mr. N.R. Parekh for Respondent No.6.
Mr. E.K. Sasidharan for Respondent No.7.
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CORAM : DR.D.Y.CHANDRACHUD, J.

September 11, 2006.

P.C.

This petition has been instituted by a Co-operative Housing Society registered under the Maharashtra Co-operative Societies' Act, 1960 inter alia to challenge a warrant of attachment dated 9th March 2004, levied by the Municipal Corporation for Greater Mumbai, on account of non-payment of property taxes. According to the Petitioner, Respondent Nos.4 to 7 are developers and promoters within the meaning of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. A building by the name of

'Harishchandra Apartments' comprising of two wings, Wings 'A' and 'B' consisting of 47 flats has been constructed on a plot of land bearing CTS Nos.1113 and 1116 of village Chincholi, Taluka Borivli, Malad (West), Mumbai-400 064. According to the Petitioner, the developers who developed the property had sold the flats to flat purchasers with whom individual agreements were entered into. According to the Petitioner, the developers had individually collected maintenance and other outgoings from the flat purchasers till the formation of an ad-hoc Committee by the purchasers. Possession was taken by the flat purchasers in 2000 even though no Occupation Certificate was issued at that stage. According to the Petitioner, an amount of Rs.8,08,351/- was collected by the developers which was, however, not handed over to the Municipal Corporation. A Co-operative Society was registered on 19th July 2005. According to the Petitioner, until December 2002, the individual purchasers paid maintenance charges and outgoings to Respondent Nos.4 to 7. The ad-hoc Committee of flat purchasers is stated to have been formed sometime in January 2003. There are admittedly arrears of property taxes due between the period 1st April 1999 and 31st March 2003. The attachment was levied by the Municipal

Corporation on 9th March 2004 (Exhibit-C). According to the Petitioner, from time to time diverse amounts have been paid to the Municipal Corporation, particularly after the ad-hoc Committee was formed.

2. The Municipal Corporation has filed an affidavit in these proceedings in which it has been stated that the property was attached for non-payment of Municipal taxes for the period 1st April 1999 to 31st March 2003 amounting, in all, to Rs.19,91,480/-. The affidavit of the Corporation recites that the Co-operative Society has paid property taxes on and after 1st April 2003. According to the Corporation, though the Society has contended that the developers had collected property taxes for the prior period, no documentary material has been forthcoming to substantiate this case. The Corporation has submitted that the internal dispute between the members of the Society and the developers should not obstruct the collection of the dues of the Corporation towards property taxes.

3. At the hearing of this petition, Counsel appearing on behalf of the Petitioner has stated before the Court that the ends

of justice would be met if this Court directs the Municipal Corporation to make the computation flatwise of the outstanding dues on account of property taxes. Counsel for the Petitioner submitted that if the Corporation were to work out the dues flatwise, the Petitioner would then forward the demand to each individual member and if thereafter there is any default, the Corporation may be at liberty to take such steps as are open in accordance with law. Section 209A of the Mumbai Municipal Corporation Act, 1888 makes a provision for pro-rata assessment of the property taxes upon individual unit holders of a Co-operative Housing Society. Having regard to the principle contained in Section 209A, Counsel appearing on behalf of the Municipal Corporation has not objected to the suggestion that has been made on behalf of the Petitioner for assessment being carried out individually flatwise. The contention in the petition that this Court should direct Respondent Nos.4 to 7 to deposit the arrears of property taxes cannot be resolved having regard to the disputed question which arise as between the Petitioner and the developers. An affidavit has been filed by Respondent No.7 in these proceedings denying that he has collected any amount by way of prior property taxes. Respondent No.6 has similarly filed an

affidavit stating that certain amounts are due and payable to him by the flat purchasers. These disputes cannot obviously be resolved in the exercise of writ jurisdiction under Article 226 of the Constitution. The actual occupier of the premises is primarily liable to pay property taxes under Section 146 of the Mumbai Municipal Corporation Act, 1888. In these circumstances, the petition can be disposed of by directing the Municipal Corporation to assess the dues on account of property taxes individually in respect of each flat having regard to the principle contained in Section 209A of the Mumbai Municipal Corporation Act, 1888 for the period to which the property taxes are outstanding. The Municipal Corporation shall cause separate bills to be served upon the Co-operative Society, which in turn, has agreed to forward the demand upon the individual members. The Municipal Corporation shall carry out the aforesaid exercise within a period of four weeks from today. In the event that there is default by any of the individual flat holders in paying the outstanding dues on account of property taxes for the period in question, the Municipal Corporation shall then be at liberty to take necessary steps in accordance with law in respect of the defaulting member, or members.

4. In view of the aforesaid direction, the impugned auction notice shall stand quashed and set aside granting liberty to the Municipal Corporation to take steps in accordance with law in relation to any default committed by an individual flat owner.

5. The petition is accordingly disposed of. No order as to costs.

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